

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

	)	Civil No. 09CV2109 BEN(RBB)
	)	
In Re SONY VAIO COMPUTER	)	ORDER IMPOSING SANCTIONS ON
NOTEBOOK TRACKPAD LITIGATION	)	PLAINTIFF RONALD FLYNN FOR
	)	FAILING TO ATTEND EARLY NEUTRAL
	)	EVALUATION CONFERENCE AND
	)	SETTING FURTHER PROCEEDING
	)	
	)	
	)	

Plaintiff Ronald Flynn failed to appear at the early neutral evaluation conference in this case ("ENE"), although the Ex Parte Application to Excuse Class Representatives' Personal Appearance at ENE was denied on January 14, 2011 [ECF Nos. 39, 45], and Flynn's Renewed Ex Parte Application to Excuse His Personal Appearance at ENE was denied on January 24, 2011 [ECF No. 48]. As a result, the Court issued an order to show cause why Plaintiff Flynn should not be sanctioned. (Mins., Jan. 24, 2011, ECF No. 48.) Flynn was to file any opposition to the order to show cause by January 31, 2011, and Defendant Sony Electronics, Inc. and Defendants Best Buy Co., Inc. and Best Buy Stores, L.P. ("Best Buy") were to file any reply by February 10, 2011. (Id.)

1 On January 31, 2011, Plaintiff Ronald Flynn's Opposition to  
2 Order to Show Cause Why Sanctions Should Not Issue re Failure to  
3 Appear at ENE was filed [ECF No. 51]. Defendants, on February 10,  
4 2011, each filed a response to Plaintiff's Opposition [ECF Nos.  
5 52, 53].

6 This Court, on February 14, 2011, requested that counsel for  
7 Sony and Best Buy each file a declaration outlining the fees and  
8 costs incurred by their clients to address Flynn's Opposition.  
9 (Mins., Feb. 14, 2011, ECF No. 55.) Counsel for Sony and Best Buy  
10 submitted their declarations on February 22, 2011 [ECF Nos. 56-  
11 58].

12 After considering the filings by the parties, the Court  
13 concludes that Plaintiff Ronald Flynn should be sanctioned in the  
14 amount, and for the reasons, outlined below.

#### 15 DISCUSSION

16 Without question, this Court has the inherent power to assess  
17 sanctions for the "willful disobedience of a court order."  
18 Alyeska Pipeline Service Co. v. Wilderness Soc'y, 421 U.S. 240,  
19 258-59 (1975). Rule 16(f) of the Federal Rules of Civil Procedure  
20 provides that the Court may sanction a party or its attorney if  
21 the party "fails to appear at a scheduling or other pretrial  
22 conference . . . ." See Fed. R. Civ. P. 16(f). Similarly, the  
23 local rules for the United States District Court for the Southern  
24 District of California state that "[s]anctions may be appropriate  
25 for the unexcused failure to attend [the ENE conference]." S.D.  
26 Cal. Civ. L.R. 16.1(c). The failure to comply with the Federal  
27 Rules of Civil Procedure or the Court's local rules may be ground  
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1 for "imposition of monetary sanctions or attorneys' fees and  
2 costs, and other lesser sanctions." S.D. Cal. Civ. L.R. 83.1(a).

3 **A. Flynn Willfully Failed to Appear**

4 On January 11, 2011, Plaintiffs Christina Egner and Ronald  
5 Flynn filed an Ex Parte Application to Excuse Class  
6 Representatives' Personal Appearance at ENE [ECF No. 39]. In  
7 their Application, they sought permission to participate in the  
8 January 21, 2011 early neutral evaluation conference by phone.  
9 (Pls.' Ex Parte Appl. Excuse 4, ECF No. 39.) Attached to the  
10 Application was a declaration from Ronald Flynn. (Id. Decl.  
11 Flynn.) Plaintiff Flynn stated that he is the sole proprietor of  
12 his real estate business, and "[d]uring this time [January] I  
13 generally work six to seven days a week . . . ." (Id. at 2.)  
14 Flynn also stated that this period is "critical" to his business,  
15 because real estate transactions are "consummated in the second  
16 and third quarter." (Id.) In the Application, Plaintiffs  
17 contended that "[t]wo days of cross-country travel . . . will have  
18 a detrimental impact on Mr. Flynn's individual business." (Pls.'  
19 Ex Parte Appl. Excuse 4, ECF No. 39.)

20 Defendant, Sony Electronics, Inc. filed an Opposition to  
21 Plaintiffs' Ex Parte Application [ECF No. 40]. In its Opposition,  
22 Sony pointed out that between November 24, 2010, and December 6,  
23 2010, Plaintiffs' and Sony's counsel discussed Plaintiffs'  
24 proposal that Egner and Flynn be excused from attending the early  
25 neutral evaluation conference. (Def. Sony Elecs. Inc.'s Opp'n 2,  
26 ECF No. 40.) During these discussions, the reason given for the  
27 request was "travel distance." (Id.) According to Sony,  
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1 "[P]laintiffs did not mention plaintiff Flynn's work schedule  
2 . . . as a basis for their request." (Id.)

3 Defendant, Best Buy, filed its Response to Plaintiffs' Ex  
4 Parte Application to Excuse Class Representatives' Personal  
5 Appearance [ECF No. 41]. Best Buy did not expressly oppose  
6 Plaintiffs' request to be excused from personally attending the  
7 ENE. (Def. Best Buy Co., Inc.'s Resp. 1-2, ECF No. 41.) Instead,  
8 it stated, "If plaintiffs are excused from attending, so too  
9 should Best Buy's representative be permitted to participate by  
10 phone, and Best Buy pledges to have her available to do so." (Id.  
11 at 2.)

12 On January 14, 2011, Plaintiffs filed their Reply [ECF No.  
13 44]. After considering all relevant facts and argument of  
14 counsel, the Court found that Plaintiff Flynn did not show good  
15 cause to be excused from attending the January 21, 2011 early  
16 neutral evaluation conference.

17 Six days later, on January 20, 2011, at 5:12 p.m., Flynn  
18 filed a Renewed Ex Parte Application to Excuse his Personal  
19 Appearance at ENE [ECF No. 46], which was scheduled for the next  
20 morning, January 21, 2011, at 8:30 a.m. In the Renewed Ex Parte  
21 Application, Plaintiffs' counsel stated, "Ronald Flynn intended to  
22 attend the ENE." (Pl. Ronald Flynn's Renewed Ex Parte Appl. 2,  
23 ECF No. 46.) This statement is incorrect. In his earlier January  
24 11, 2011 declaration, Flynn stated, "If necessary I am willing and  
25 able to participate via telephone at the January 21, 2011 early  
26 neutral evaluation conference." (Pls.' Ex Parte Appl. Excuse,  
27 Decl. Flynn 2, ECF No. 39.) In his subsequent declaration, signed  
28 on January 20, 2011, Flynn made his intent clear. "I had intended

1 to appear at the January 21, 2011 conference via tele-  
2 conferencing." (Decl. Pl. Ronald Flynn Re Personal Appearance at  
3 ENE 2, ECF No. 47.) Furthermore, there is no evidence that Flynn  
4 purchased an airline ticket to travel to San Diego, let alone made  
5 a reservation, anytime before the January 21, 2011 conference. He  
6 did not intend to personally attend the ENE.

7 In his January 20, 2011 declaration, Flynn gave the following  
8 reasons to be excused from traveling from Florida to San Diego:

9 Unfortunately I am unable to personally appear because I  
10 am closing a commercial real estate transaction today,  
11 negotiating a residential real estate purchase contract  
12 for my business today, and meeting this evening with  
out-of-country clients to arrange to show them apartment  
complexes in Orlando, Bradenton, and Sarasota on Friday,  
Saturday, and perhaps Sunday.

13 (Id.) Flynn did not establish that he could not accomplish these  
14 tasks or reschedule them so that he could attend the early neutral  
15 evaluation conference. As a result, his renewed request was  
16 denied, and when he did not appear at the conference, an order to  
17 show cause why he should not be sanctioned was issued [ECF No.  
18 48].

19 Plaintiff's Opposition does not address Flynn's unilateral  
20 decision not to attend the ENE, knowing that his request to be  
21 excused had been denied. Instead, Flynn argues that the  
22 conference was productive, and his absence "did not significantly  
23 detract from the efficacy of the conference." (Pl. Ronald Flynn's  
24 Opp'n 2, ECF No. 51.) He argues that his "personal presence would  
25 not have had a material impact on the conference's outcome." (Id.  
26 at 3.) Flynn states that his "counsel worked to ensure a  
27 productive conference, and these efforts continue to date." (Id.)  
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1 He concludes by stating that if sanctions are awarded, they should  
2 be nominal and not exceed \$100. (Id. at 5.)

3 Both Defendants disagree. Best Buy observes that  
4 "Plaintiff's opposition to the Order to Show Cause focuses little  
5 on Mr. Flynn, and not at all on the reasons for his absence.  
6 Instead, it focuses on the presence of Plaintiffs' counsel and  
7 Plaintiff Egner." (Defs. Best Buy Co., Inc.'s & Best Buy Stores,  
8 L.P.'s Resp. 2, ECF No. 52.) "[T]here was no good cause for  
9 [Flynn's] failure to appear." (Id.)

10 Defendant Sony maintains that "Plaintiff Flynn should be  
11 sanctioned because he violated this Court's orders and Local  
12 Rules." (Def. Sony Elecs. Inc.'s Reply 2, ECF No. 53.) It  
13 describes the failure to attend the early neutral evaluation  
14 conference as a willful failure to comply the Court's orders.  
15 (Id.) Sony notes, "Tellingly, plaintiff Flynn's opposition does  
16 not make any attempt to explain his failure to appear at the ENE  
17 conference, nor is it supported by any declaration or other  
18 evidence." (Id.) Defendant observes that Plaintiff had a  
19 transaction closing "during the day on January 20, 2011, which  
20 left him time to travel to San Diego for the ENE conference the  
21 following day." (Id. at 3.)

22 The early neutral evaluation conference was continued to  
23 January 21, 2011, from an earlier date because the new date was  
24 convenient for all parties and counsel. (See Order Den. Pls.' Ex  
25 Parte Appl. Excuse 4, ECF No. 45.) Nevertheless, less than one  
26 month after the Court's December 15, 2010 order continuing the  
27 conference, Plaintiffs asked to be excused from personally  
28 appearing. (Pls.' Ex Parte Appl. Excuse, ECF No. 39.) Flynn's

1 first request to be excused was denied because he failed to show  
2 good cause to be excused from appearing. (Order Den. Pls.' Ex  
3 Parte Appl. Excuse 4, ECF No. 45.) After business hours on  
4 January 20, 2011, at a time when Flynn should already have been en  
5 route to San Diego from Florida, he submitted a Renewed Ex Parte  
6 Application [ECF No. 46]. The Renewed Ex Parte Application was  
7 denied on January 21, 2011. (Mins., Jan. 21, 2011, ECF No. 48.)

8 **B. The Appropriate Sanction**

9 Plaintiff Ronald Flynn, a resident of Florida, filed this  
10 Class Action Complaint in the United States District Court for the  
11 Southern District of California. (Compl. 1, 3, ECF No. 1.) Flynn  
12 initiated and intends to prosecute this lawsuit in this district.  
13 Accordingly, he voluntarily chose to subject himself to the local  
14 rules of this Court and assume the burdens of litigating these  
15 claims in a forum far from his home. After the Court denied his  
16 request to be excused from attending the ENE, Flynn unilaterally  
17 chose to disregard the Court's order. He simply decided not to  
18 appear. Notably, Plaintiff has not demonstrated that his business  
19 transactions could not have been completed or rescheduled to  
20 permit him to travel to San Diego on Thursday afternoon or  
21 evening, January 20, 2011, and return to Florida on Friday,  
22 January 21, 2011, after the 8:30 a.m. conference.

23 The co-plaintiff in this action, Christine Egner, attended  
24 the ENE. Her compliance with the obligation to appear does not  
25 cure Flynn's disregard for the Court's orders and his failure to  
26 appear.

27 As a result of Flynn's actions, Sony and Best Buy each  
28 incurred fees they otherwise would not have. The declaration

1 submitted by counsel for Best Buy establishes that it incurred  
2 legal fees of \$1,584.00 drafting the Response to Plaintiff Flynn's  
3 Opposition to the Order to Show Cause. (Decl. Michael Geibelson  
4 Pursuant Feb. 14, 2011 Min. Order 2, ECF No. 56.) Sony  
5 Electronics submitted declarations from its attorneys showing that  
6 it incurred attorneys' fees totaling \$3,418.00 in addressing  
7 Flynn's Opposition to Order to Show Cause. (Supplemental Decl.  
8 Michelle Doolin Supp. Def. Sony Elecs. Inc.'s Reply 1, ECF No. 57;  
9 Supplemental Decl. Leo P. Norton Supp. Def. Sony Elecs. Inc.'s  
10 Reply 1, ECF No. 58.) Plaintiff Flynn is to reimburse Sony the  
11 sum of \$3,418.00 and reimburse Best Buy the sum of \$1,584.00,  
12 which represent the reasonable sums each Defendant incurred  
13 because of Flynn's failure to appear. The sanction shall be paid  
14 to each Defendant on or before April 18, 2011. Nothing in the  
15 record suggests that Plaintiff Flynn is financially unable to pay  
16 these amounts. Consequently, the sanction amounts are to be paid  
17 by Flynn personally and shall not be reimbursed or advanced by  
18 counsel for Plaintiffs.

1           **C.     Further Proceedings**

2           The Court will conduct a telephonic attorneys-only case  
3 management conference on April 21, 2011, at 8:30 a.m. The parties  
4 shall lodge a joint discovery plan with the Court by April 18,  
5 2011. Counsel for Plaintiffs is to arrange the call.

6           IT IS SO ORDERED.

7  
8 February 25, 2011

  
Ruben B. Brooks, Magistrate Judge  
United States District Court

9  
10 cc:  
11 Judge Benitez  
12 All Parties of Record  
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